

## REMARKS

This amendment is a substitute for the amendment filed on April 21, 2004. Please disregard that earlier filed amendment. This amendment makes changes to the claims in view of an examiners interview dated May 27, 2004, during which Applicants explained the operation of the claimed invention and applicants' view of how the invention distinguishes over the cited prior art as recited in its proposed amendment provided in advance to the examiner. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 1, 3, 5, 6, 7, 9, 11, 12, 13, 15, 17, and 18 have been amended and claims 2, 8, and 14 have been cancelled. Claim 1 has been amended to clarify that the supply chain management framework includes a plurality of independent stores, distributors, a supply chain system computer and an independent supply chain manager. Additionally, the claim has been amended to add the step of the independent supply chain manager negotiating on behalf of the independent stores landed costs or negotiated markups for various different goods with a plurality of distributors, wherein the landed cost is a good cost plus the negotiated markup. Additionally, the "collecting data" step has been amended to clarify that the data is collected by the supply chain system computer from a plurality of independent stores of the supply chain utilizing a network, the data comprising an amount of completed sales of goods by the respective independent stores not made on the network on at least a daily basis. Note that the inventors intend this to mean that POS is reported on a daily basis or less, including potentially on a real time basis. Additionally, the "sending" step has been amended so that regardless of where the electronic order forms are generated, the respective stores initiate the sending of the electronic order forms to the distributors utilizing the network. Also, it has been clarified that it is the supply chain computer that is receiving the distributor invoices. Also, the "calculating" step has been amended to clarify that the

calculating is performed via a computer and could be calculating a calculated markup. Additionally, the “auditing” step has been amended to comparing the price or the calculated markup for the at least one good to the landed cost or the negotiated markup for the goods. Finally, a new step has been added of generating a communication if the comparing step indicates a discrepancy.

The present claimed invention is directed to the unique situation of creating a virtual company of independent entities in an independent supply chain management framework wherein an independent supply chain manager can negotiate landed costs with an entire group of independent distributors and suppliers on behalf of a plurality of independent stores that would otherwise not have the requisite economic power to obtain the best price available in order to compete with stores owned by a single entity such as Walmart. Also, the supply chain manager is frequently uniquely positioned to know the prices for the goods charged by the various suppliers in the supply chain, and may well have negotiated such prices with the suppliers. Thus, in negotiating with the various distributors who are purchasing goods from the suppliers, the supply chain manager will, in many cases, know the cost of the good to the distributor. The problem arises in that the goods orders may be generated by the stores themselves, and regardless of where the order is generated, the independent store will need to approve the order and otherwise initiate the sending of the order, before it can go to the distributor. Also, the invoices may go to the stores themselves, since the stores initiated the orders and ultimately receive the goods. Thus, the benefit of the supply chain manager negotiation for the independent stores may be lost, unless an operation is performed to compare the negotiated landed cost or negotiated markup for the good negotiated not by the store but by the third party supply chain manager to the price or the calculated markup of the good actually charged by the distributor to the store. If a discrepancy is found, then a communication is initiated. The claims have been amended to clearly bring out this aspect in the context of independent stores and a supply chain manager.

Note that claim 3 further defines the “comparison” step as being implemented using a table of landed costs. Claim 6 clarifies that the communication can be an electronic mail alert. The alert can then be used to drive a refund to the independent store.

Referring to the objection to claims 5, 11 and 17, the informalities referenced have been obviated by appropriate amendment.

The claims were rejected under 35 USC 103 over Freeman '557 in view of Shavit '156 and further in view of official notice. This rejection, to the extent that it is applied to the claims as amended, is respectfully traversed and reconsideration thereof is requested.

Freeman is directed to a supply ordering program that obtains information such as vendor specific codes, SKU codes, vendor-supplied pricing information, and parts numbers to allow a builder to create a customized table of supply materials to be ordered, which table is then used to generate a materials and supply list with correct vendor parts numbers, SKU codes, etc. There is no disclosure or even the suggestion of the claimed independent supply chain manager negotiating landed costs or negotiated markups with distributors, in combination with the sending of the order for the goods initiated by the independent stores, followed later by an operation by the supply chain system computer that compares prices or calculated markups actually charged by the distributor with the landed costs or negotiated markups for the good negotiated previously by the supply chain manager.

Shavit discloses a system to facilitate concurrent interactive communication between buyers and sellers. The system in Shavit does not perform a mediation service or negotiate for a group of independent buyers, or perform a comparison function as described, and thus does not remedy the deficiencies of Freeman. Shavit does not receive POS data except possibly for sales consummated on the network. See Shavit at column 6, lines 34-35.

The examiner states that Official Notice is taken of the fact that it is well known to audit a price by comparing it to a predetermined amount. However, this is not a case of a simple audit within a closed system. The present claims are directed to a context of an independent supply chain with a set of independent stores and distributors, and an independent supply chain manager that has negotiated on behalf of the independent stores a landed cost or negotiated markup for goods. Because the stores are independent, the ultimate sending of the orders is initiated by the independent stores and the stores will probably receive the final invoices. Thus, the benefit of the supply chain manager negotiation on

behalf of the independent stores may be lost, unless an operation is performed to compare the landed cost negotiated by the independent supply chain manager for the good to the price of the good actually charged by the distributor, followed by a communication if there is a discrepancy. Note that the system depends initially on receiving POS data from stores for sales not made on the network, for example Burger King sales of Whopper sandwiches, so that orders can be generated. Neither reference disclosed this. Then, to facilitate the operation of doing the comparison of price to negotiated landed cost, distributor invoices must be received at the supply chain computer. Then the calculation of the price or calculated markup must be performed and the comparison step performed. Neither reference discloses these operations. Thus, the combination resulting from the office action, even if it could be made (which it cannot), is missing the foregoing elements in a coherent operable system.

Regarding the aspect of Official Notice, if such Notice is continued in the next office action, then it is requested that this position be substantiated with prior art references, per MPEP 2144.03 and that a suggestion in the prior art be pointed out for a motivation to combine each of these elements to realize the claimed combination. In view of the fact that this is a two reference combination supplemented by resort to Official Notice for some of the elements, such proof is essential to nullify the potential that applicants' specification is being used as a blueprint for such a combination.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

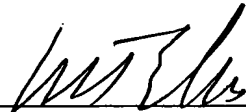
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment,

to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date June 4, 2004

By 

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